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| In the Matter of | ) | |
| | ) | |
| Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 | ) | MM Docket No. 93-2 |
| | ) | 93-215 |
| Rate Regulation | ) | |

Re: Notice of Proposed Rulemaking released July 16, 1993 by the Commission: Commissioner Barrett issuing statement.
Comment Date: August 25, 1993

## I. Introduction

These comments are submitted on behalf of Eagle Communications, Inc. (Eagle), operator of seven (7) small systems ranging in size from 100 subscribers to 6,500 subscribers, for a total of approximately 12,500 subscribers.

These comments are in response to the Commission's request in the above referenced Notice of Proposed Rulemaking (Notice), relating to the proposed regulatory requirements to govern "cost-to-service" showings.

Except for the general comments in Section II, all other comments will be cross referenced to the Section and Paragraph of the Notice.

## II. Background

In general, Eagle is in support of the Commission's adopted bench mark and price cap approach as the primary means of governing rates for regulated cable services. It is Eagle's opinion, however, that improvements to the bench mark approach should definitely be made as more history is developed, and that under certain circumstances, the cost-to-service approach, as a secondary approach, is the only fair way to adequately compensate an operator for his investment and risk.

## III A Regulatory Framework to Govern Cost-Based Cable Service Rates

Para 17. In order to control the amount of administrative expense for all parties, (the Municipality, the Cable Operator, and the FCC), Eagle supports the proposal that once a cost-to-service showing has been evaluated by either the local franchising authority or the Commission, another such showing for the tier may not be made for one year.

Para 18. Eagle is most definitely opposed to establishing procedural limits or bars on cost-of-service showings seeking to justify rates higher than existing rates absent a

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demonstration of special circumstance or extraordinary costs. While it is true that most operators have set rates in an unregulated environment at a level to be fully compensatory, circumstances can change, interest can increase rapidly, labor increases may be mandated by labor unions or otherwise within a cable operator's franchise area, and costs (other than programming costs), may increase more than normal inflation for a given area. Furthermore, the phrase "absent a demonstration of special circumstances ..." is so subjective. It simply makes more sense to allow "cost-of-service" showing at anytime, except not more often than once every twelve (12) month period.

Para 19. We agree that the use of FCC provided worksheets for cost-of-service showings would greatly reduce administrative burdens by providing for uniform presentation of development of cost-based rates for cable service. However, we believe attachments to support calculations and unusual circumstances should be allowed to supplement the FCC forms. Furthermore, the use of computer generated facsimiles should also be allowed so as to eliminate the need to type the forms and thereby reduce the chance of typographical errors.

Para 20. With minor exceptions, we do not oppose the use of the traditional cost-of-service formulation whereby a company's revenue requirement is equal to expenses of providing services and a fair return on its investment. Under the traditional formulation, $R = E+(V-d)r$, where R is the revenue requirement; E is expenses including operating expenses, maintenance expenses, depreciation and taxes; V is the value of the rate base including plant in service and working capital; d is accumulated depreciation; and r is the rate of return consisting of a weighted average of long-term debt, preferred stock, and common stock. Exceptions or modifications of the traditional approach are set forth in subsequent paragraphs herein.

Para's 21 -- 30. Regarding what expenses and what rate of return on investment that cable operators would be permitted to recover in rates for regulated service, we submit the following comments:

We agree that expenses totally unrelated to providing cable service and certain special expenses should be excluded from the calculations.

We are opposed to having the Commission prescribe depreciation rates for cable plant as this would add additional administrative costs for the operators, especially small operators. Most operators are already burdened with keeping three or four separate depreciation schedules (e.g., book depreciation schedule maintained to reflect generally accepted accounting principles (GAAP), federal tax depreciation schedule, state depreciation schedule, and local property tax schedule). Adding another schedule (especially for small operators who do not have the luxury of adequate staff) will be terribly burdensome and costly. It would seem that rates of depreciation should be the same as the operator is currently using for book purposes. In a lot of instances, this may be the same as the operator's federal income tax depreciation rates.

Para 31 -- 43. Regarding the Commission's tentative conclusion to use "original cost" methodology to value cable operator's rate base and to exclude excess acquisition costs from rate base, we believe this would be terribly unfair and burdensome. Recognizing that in the Monopolistic Public Utility arena, original cost methodology has been used for years, and, when acquisitions are made, the original cost information is freely passed on to the new purchaser or is readily available from the Seller's annual reports filed with the State Regulatory Commissions, this is not the case in the cable TV industry. Original cost figures simply are not available for those systems which have been sold. The only systems that might have these figures are those situations where a particular system was built from scratch and has always been owned by the same operator. Therefore, we believe that cost, as defined by GAAP should be used.

Furthermore, costs which in the Public Utility arena are referred to as "Excess Acquisition Costs" should be allowed to be included in the rate base and amortization of these costs should likewise be allowed as an expense. This seems to be a logical approach because in many acquisitions, especially by small operators, no formal appraisals were made of the tangible assets at the time of purchase. In some instances the so called "Excess Acquistion Costs" could therefore have been over or understated. Furthermore, an investor (the operator) expected a return on his total investment, not just part of the investment, when he acquired the system. Financial Institutions have loaned money on the value of the system as a whole. To deprive an operator of a return on his total investment at this point would seem to be terribly unfair. To simply allow a larger (across the board) rate of return might be unfair to the subscriber, especially in the instance where all acquisition costs were allocated to the tangible assets or where the system was built from scratch. Accordingly, in our opinion, it would seem that both the rate base as well as depreciation and amortization should be based on the same method of accounting that the operator is using for book purposes, which presumably is GAAP.

Para 44 -- 45. While we believe that some amount of working capital should be included in the rate base, we are of the opinion that the balance sheet approach to determining working capital simply will not work for several reasons. First, as was pointed out by the Commission, working capital can be either a negative or a positive amount. Second, for conglomerate companies that are in other businesses as well as cable TV, it would be impossible to determine how much of the working capital is attributable to the cable TV business and how much is attributable to its other businesses. It would seem that a much better approach might be to base working capital on a formula such as a multiple of normal operating expenses of the cable system (e.g., say, 90 days of normal operating expenses). Since in a cost-of-service showing the operating expenses are already developed, this should be a relatively easy computation.

Para 46 -- 51. In our opinion, a single rate of return for regulated cable service by all cable operators for the purposes of setting rates based on cost-of-service is the most logical and the least administrative burden on the operator. We have no problem with using Standard & Poors 400 Industrials (S & P 400) as a surrogate and believe such rates should be adjusted not less frequently than quarterly.

Para 52. The Commission's tentative conclusion that the cost of equity will be in the range of 12% - 17% ( assuming a debt/equity ratio of 50%) would lead to a rate of return for regulated cable service of between approximately 10% to 12.4%, which seems reasonable.

Para 55. Regarding "Test Year Methodology", a historical test year adjusted for known and measurable changes, makes a lot of sense to us. We would recommend that either the latest twelve month period or the latest complete fiscal year of the operator be used for the Test Year at the operator's election. New systems which have no history should be allowed to use projected or forecasted figures.

Para 64. Allocation of joint and common costs, such as corporate office salaries, should be allocated to the franchise level. However, a per subscriber basis is not the best allocator. It would appear that both a per subscriber and the number of channels, including pay channels, should be included in the mix to arrive at an allocation of joint and common costs. A channel factor per subscriber for each level of service should not be too difficult to determine (much the same way as the channel factor used in the bench mark worksheets).

Para 68. We would propose that transactions with affiliates do not result in unreasonable charges for regulated cable service based on cost-of-service showings. Accordingly, if inter-company profits were eliminated much the same way as is done under GAAP accounting when consolidated financial statements are prepared, this objective would be accomplished.

Para 77. We concur with Alaska Cablevision and the Arizona Cable Television Asso. petition that a small system, (under 1,000 subscribers) should be totally exempt, provided such small system is not part of an MSO having more than 100,000 subscribers. If it is part of an MSO which has more than 100,000 subscribers, then it would still be exempt from regulation; however, in allocating costs for cost-of-service showings for those systems larger than 1,000 subscribers, all systems, including those systems under 1,000 subscribers, would be allocated proportionate costs in the same manner as if the system were a large system.

IV. Cost Studies

Para 88 We believe that in order to develop worthwhile statistics for use in administering and enforcing the cable act, all systems, including those under 1,000 subscribers should file annual reports with the FCC on an annual basis on forms no less specific than those presented in Appendix B except that systems with fewer than 1,000 subscribers would be exempt from filing Schedule 3 (Balance Sheet).

Thank you for allowing us to make these comments. We respectfully request and thank you for your consideration in these matters.

Sincerely yours,
EAGLE COMMUNICATIONS, INC.

Kenneth R. Braun, CPA
Vice President of Finance